



Kennisland

Training Intellectual Property in Audiovisual works

Challenges in Interreg programmes
and tips to overcome them

MAARTEN ZEINSTRA



Who am I?

Advisor Copyright and Technology at Kennisland. I work as a researcher, advisor and information architect with a focus on copyright and culture.

I'm the architect of copyright indexing studies, such as copyrightexceptions.eu, outofcopyright.eu and diligentsearch.eu.

I'm the national contact point for Creative Commons in the Netherlands.



Programme

14:00 - 14:20	Introductions, tour de table
14:20 - 15:30	EU Copyright Framework
15:30 - 15:45	Break
15:45 - 16:15	Creative Commons licensing
16:15 - 17:15	Cases
17:15 - 18:00	Discussion



Introductions



Photo from Visualhunt / CC0

A close-up, sepia-toned portrait of Abraham Lincoln, showing his face from the nose up. He has a full, dark beard and mustache, and his hair is dark and wavy. The image is slightly out of focus, giving it a historical, aged appearance.

*“I am the greatest loser alive by
the present law”*



Public Domain



Why is Kennisland talking about copyright?



Balance in the EU Copyright Framework

- Copyright becomes and increasingly important topic in our digital society.
- The EU Copyright Framework has a large influence on topics like access to knowledge, culture, education, research and innovation.
- The EU Copyright framework needs to make a balance between the exclusive rights of the makers and the needs of the society as a whole.



EU Copyright Framework



EU Flag, Public Domain

EU Copyright Framework

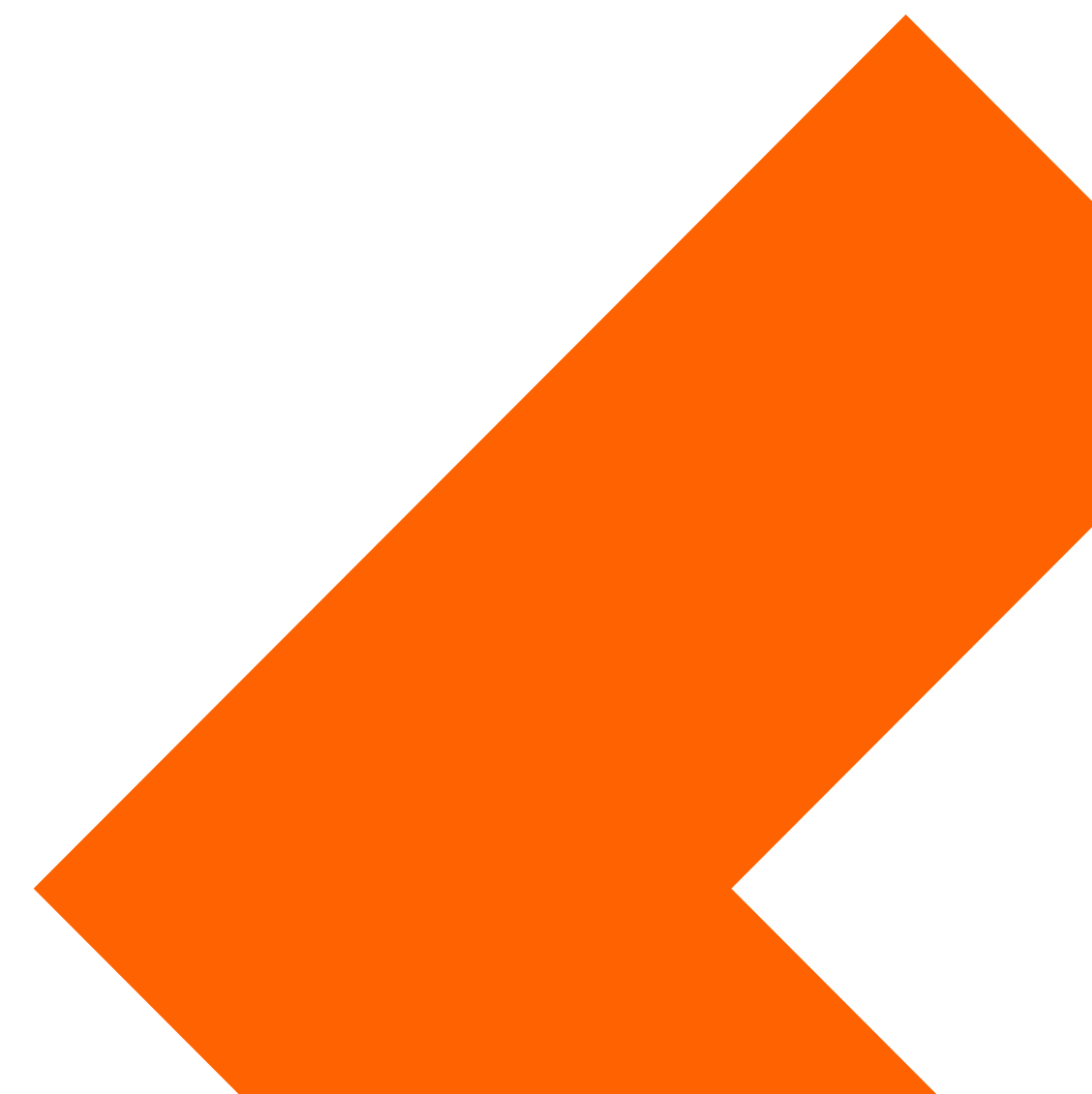
The whole of legislation, domestic and EU-wide, that applies to copyright and related rights:

- Copyright;
- Neighbouring rights;
- Database rights;
- Orphan works;
- Intermediary liability for online platforms.



Worldwide standards

- Worldwide agreements and treaties
 - Berne Convention
 - Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)



EU Legislative tools

- Directives
 - Direct a member state to implement a set of rules through domestic legislation
- Regulations
 - Directly apply to and enforceable for all member states
- Local legislation

There are very little EU regulations that apply to the copyright framework, meaning that copyright is dealt with as a (bundle of) national right.



Court of Justice of the European Union



The Court of Justice of the European Union (CJEU) is a de facto harmonisation body that has provided some EU-wide interpretations of the copyright framework.



Copyright



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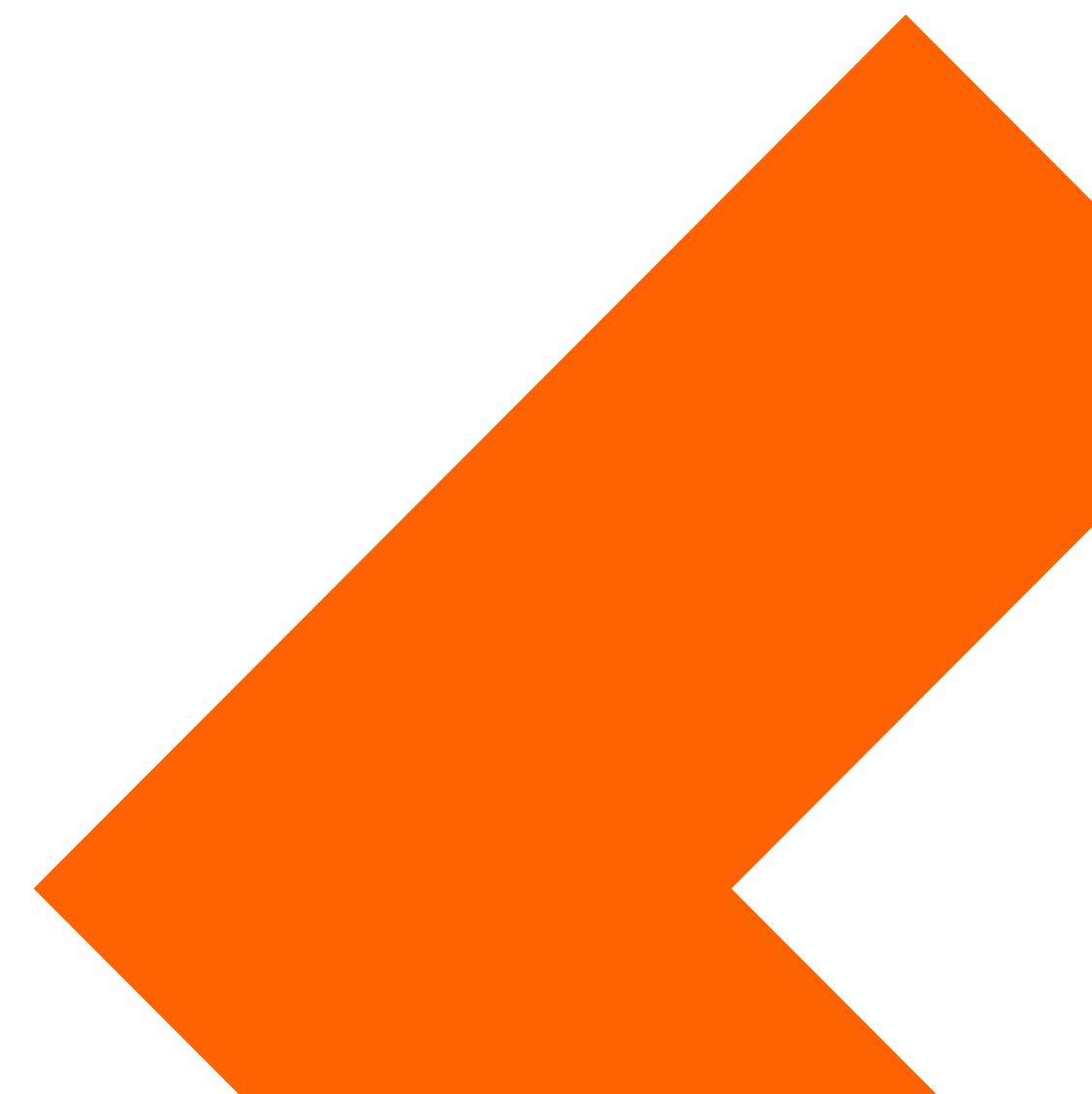
Protected subject matter

- Only expression of ideas are copyright protected: literary and artistic works
(Berne Conventions, art. 2)
 - ideas are not protected
 - facts are not protected
- CJEU: “the Author’s own intellectual creation”
 - Infopaq case (C-5/08)



Principles

- Copyright is the exclusive right of the creator to:
 - reproduce;
 - distribute.
- There are no formalities to attract copyright
- Copyright is (partly) transferable
- One work can have multiple authors / creators (co-authorship).



Structure of rights

- Economic rights (transferable, InfoSoc directive art.2-3):
 - The Reproduction right;
 - The right to communication to the public / making available.
- Moral rights (not transferable, Berne art. 6bis):
 - The right to claim authorship of the work
 - Right to object to any distortion, mutilation or other modification of, or other derogatory action



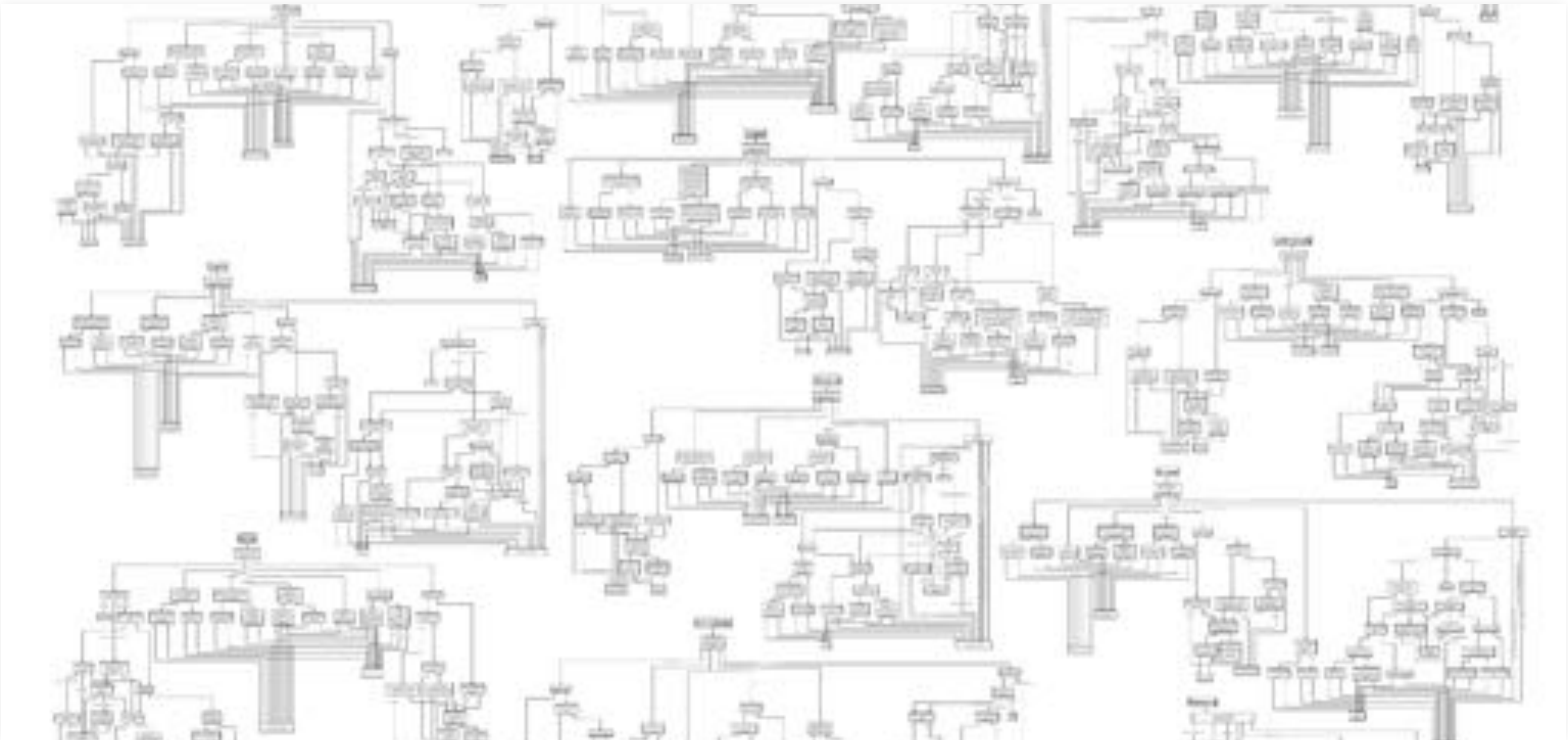
Term of Protection

Directive the term of protection of copyright and certain related rights (2006 and 2011)

- Natural persons
1st of January + 70 jaar post mortem author
- Anonymous / pseudonymous
1st of January + 70 jaar post publication / making available

Note: The term of protection can have national exceptions.
(e.g. France and U.K).





Exceptions

Berne Convention (Art. 9) gives rules for exceptions: “reproduction does **not conflict with a normal exploitation** of the work and does **not unreasonably prejudice the legitimate interests** of the author.”

Information Society Directive (InfoSoc) provides us with a list of 21 possible exceptions to Copyright. All but one of these are optional.

- Temporary acts of reproduction
(basically to allow for the internet)

The Orphan Works Directive provides another mandatory example for when rights owners cannot be found, but is only applicable for cultural heritage institutions.



COPYRIGHT EXCEPTIONS

5.1 Temporary acts of reproduction

5.2(a) Photocopying/photo-reproduction

5.2(b) Private copying

5.2(c) Reproductions by Libraries, Archives & Museums

5.2(d) Ephemeral recordings made by broadcasters

5.2(e) Reproduction of broadcasts by social institutions

5.3(a) Illustration for teaching or scientific research

5.3(b) Use for the benefit of people with a disability

5.3(c) Reporting by the press on current events

5.3(d) Quotation for criticism or review

5.3(e) Use for public security purposes

5.3(f) Use of public speeches and public lectures

5.3(g) Use during religious or official celebrations

5.3(h) Use of works of architecture or sculptures in public spaces

5.3(i) Incidental inclusion

5.3(j) Use for advertising the exhibition or sale of works of art

5.3(k) Use for the purpose of caricature, parody or pastiche

5.3(l) Use for the demonstration or repair of equipment

5.3(m) Use for the purpose of reconstructing a building

5.3(n) Use for the purpose of research or private study

5.3(o) Pre-existing exceptions of minor importance

Reproducing and making available of orphan works

Implemented Partly implemented
Not implemented Unknown



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5.3(o) Pre-existing exceptions of minor importance

■ Implemented
 ■ Partly implemented
 ■ Not implemented
 ■ Unknown



Rights can be stacked

- One creative work can have multiple authors.
- One creative work can have multiple types of intellectual property.



Is this a copy?



Is the Arcul de Triumf,
Bucharest, a copy of the Arc
de Triomphe de l'Étoile,
Paris?



Orphan works

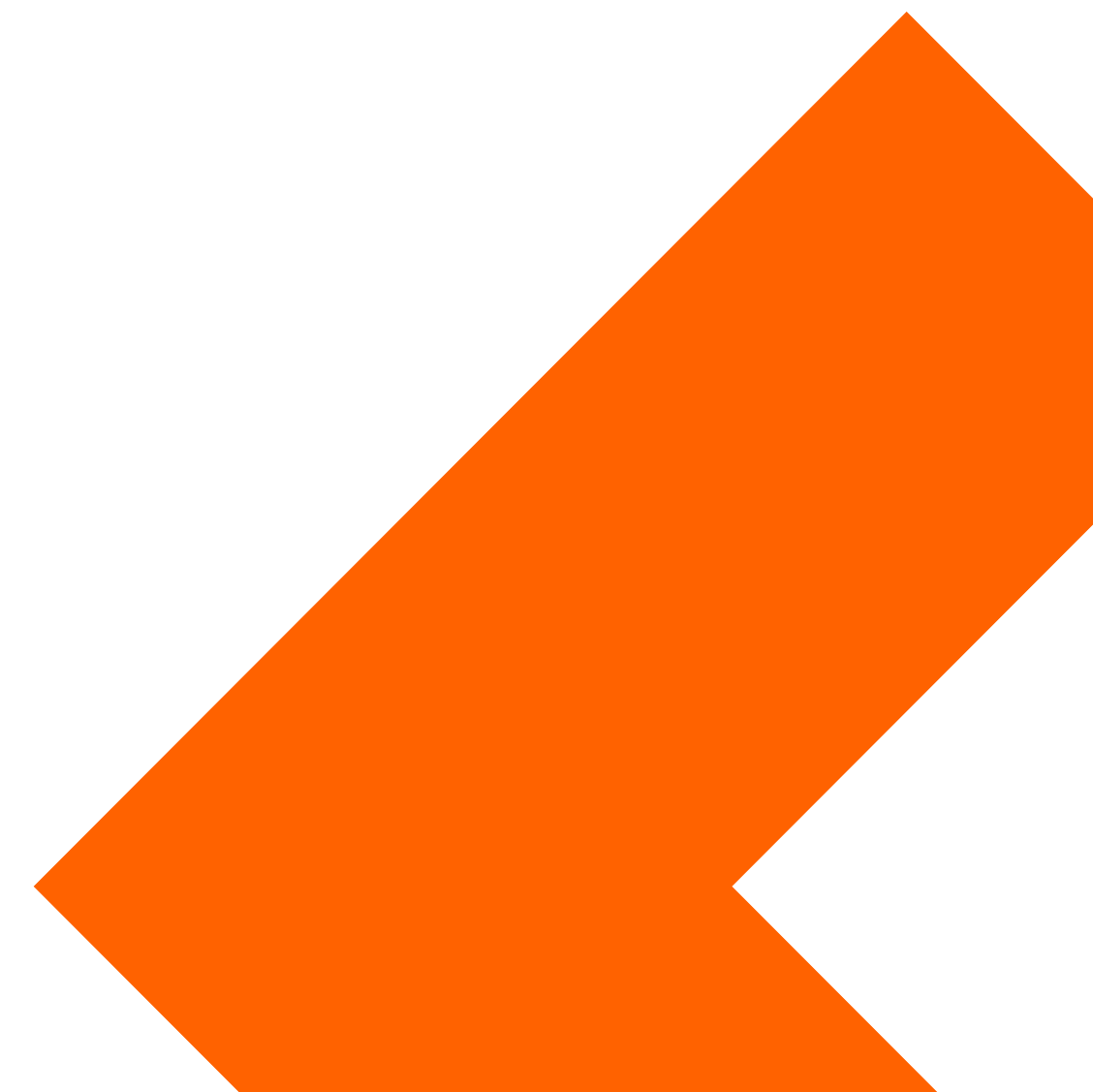


CC BY-NC Andreas-photography

Principle

Permission cannot be obtained when no rights holder can be identified or found.

EU Orphan Works Directive provides for an exception for the use of the work after a **diligent search**.



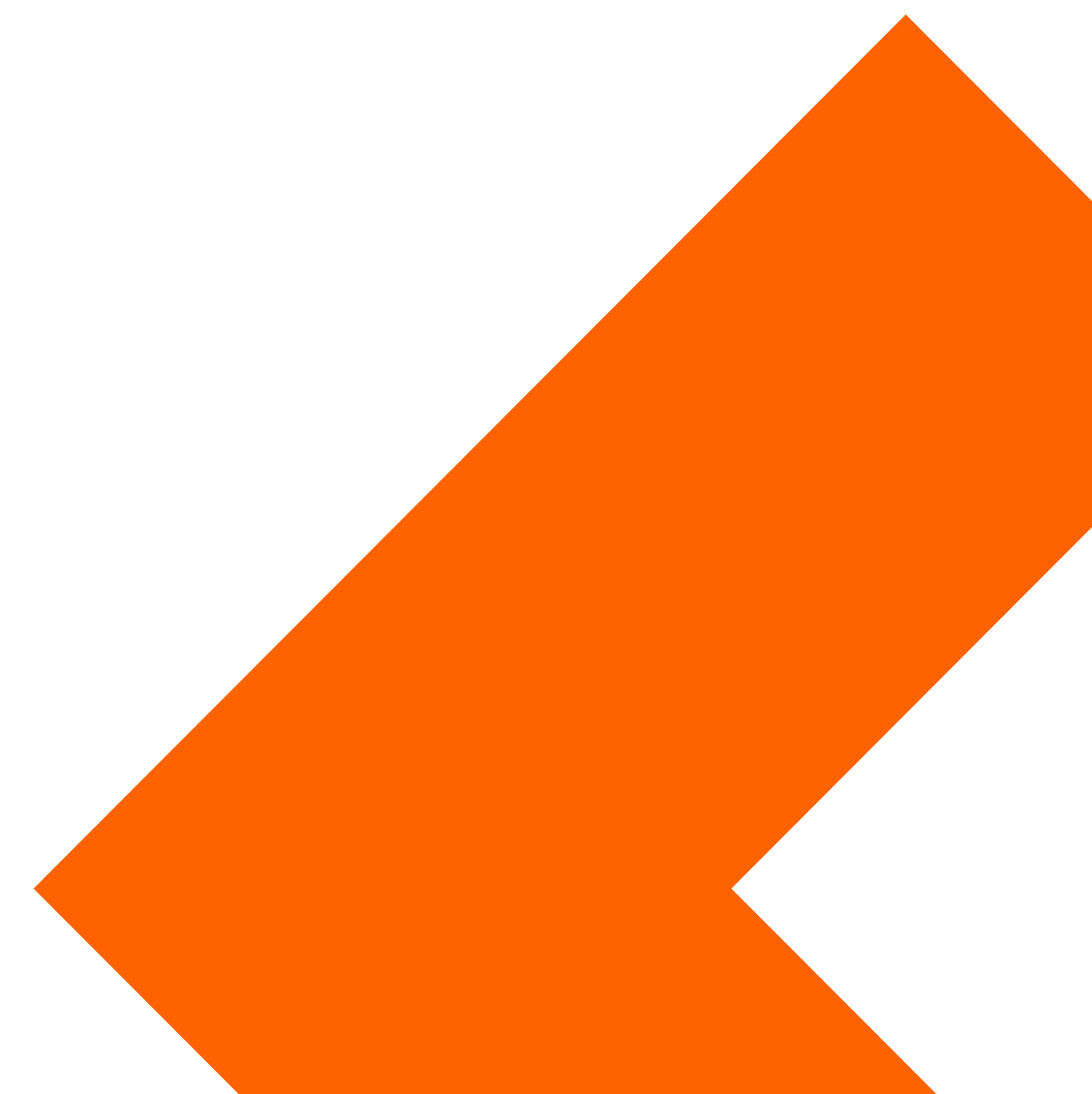
Neighbouring rights



SMK, Public Domain

Protected subject matter

- Rights similar to copyright that are not covered by the Berne Convention:
 - artists, producers, camera people, sound designers, etc.
 - semiconductor topology



Rights

- Rightsholders have the rights:
 - whether a performers can be taped
 - whether a performance can be reproduced
 - whether a performance can showed broadcast or shown



Term of protection for neighbouring rights

	Published / Communicated to the public	Not published / not communicated to the public
Broadcasts	50 year post communication	50 year post creation
Phonograms	70 year post communication	50 year post creation
Performance on a phonogram	70 year post communication	50 year post creation
Other performances	50 year post communication	50 year post creation



Database rights



CC BY 4.0, Kennisland

Principles

Database directive

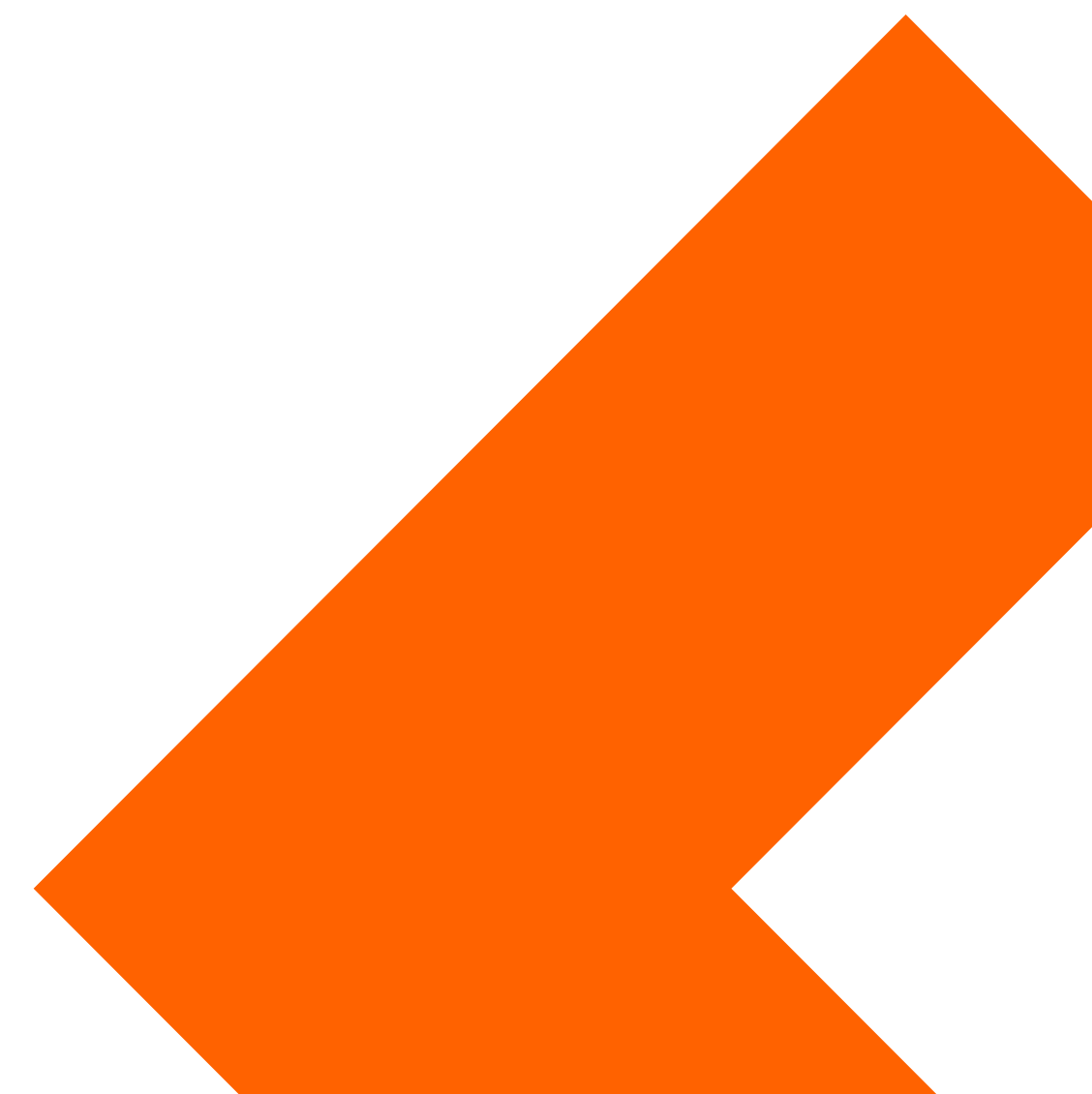
- a collection of independent works, data or other materials arranged in a systematic or methodical way and individually accessible by electronic or other means.
- for qualitatively and/or quantitatively a substantial investment
- Protects: extraction and reutilisation
- Duration: 15 year after every investment



Rights can be stacked

A single work can attract multiple intellectual properties. One work for can have:

- Copyright
- Neighbouring Rights
- Database Rights
- Personality Rights



Personality rights



SMK, Public Domain

Principles

- Check your national legislation.
- Sorry..



General Data Protection Regulation



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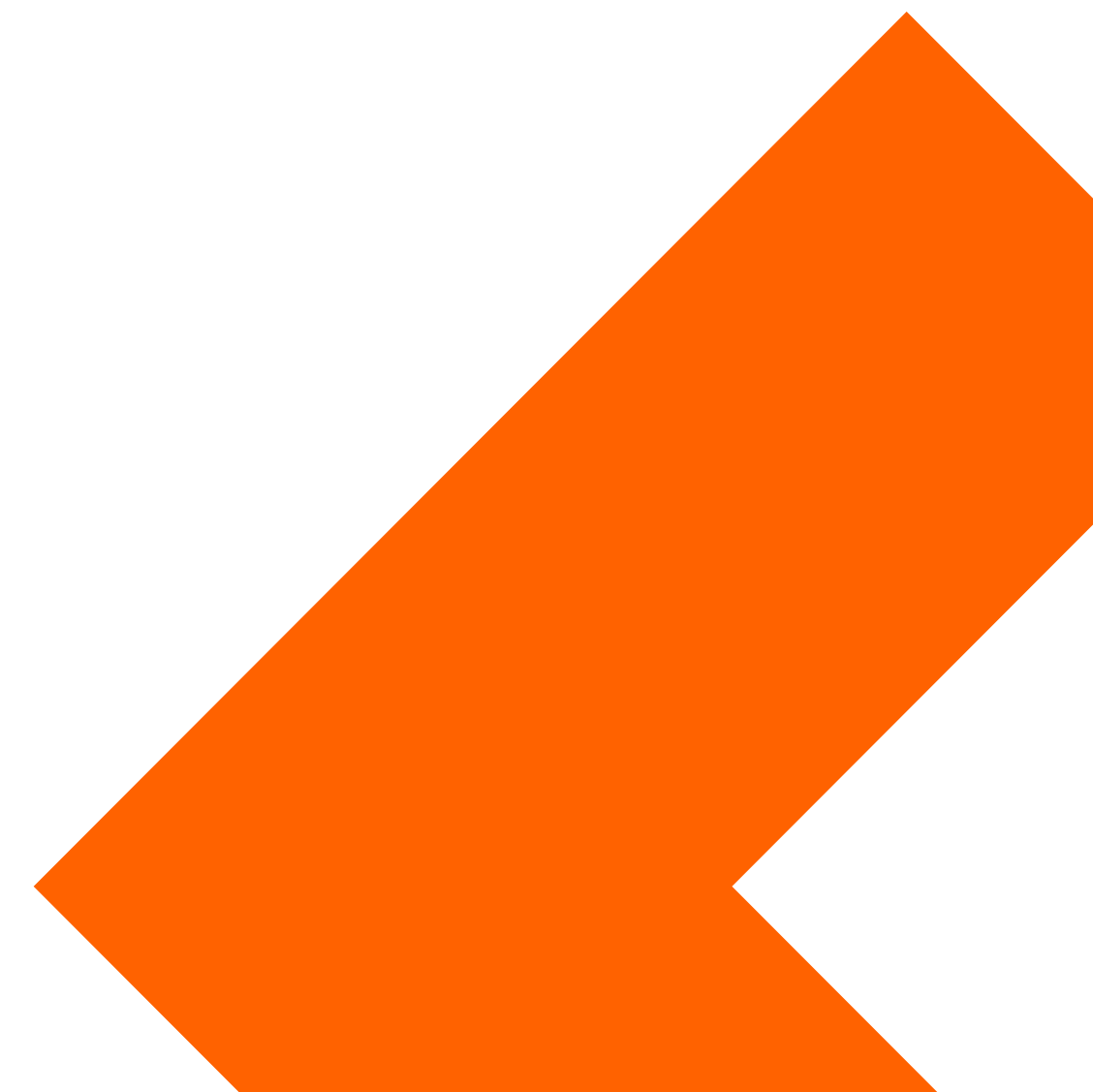
Principles

- natural persons with regard to the processing of personal data and rules relating to the free movement of personal data.
- You need permission for all (semi-)automatic processing of personal data



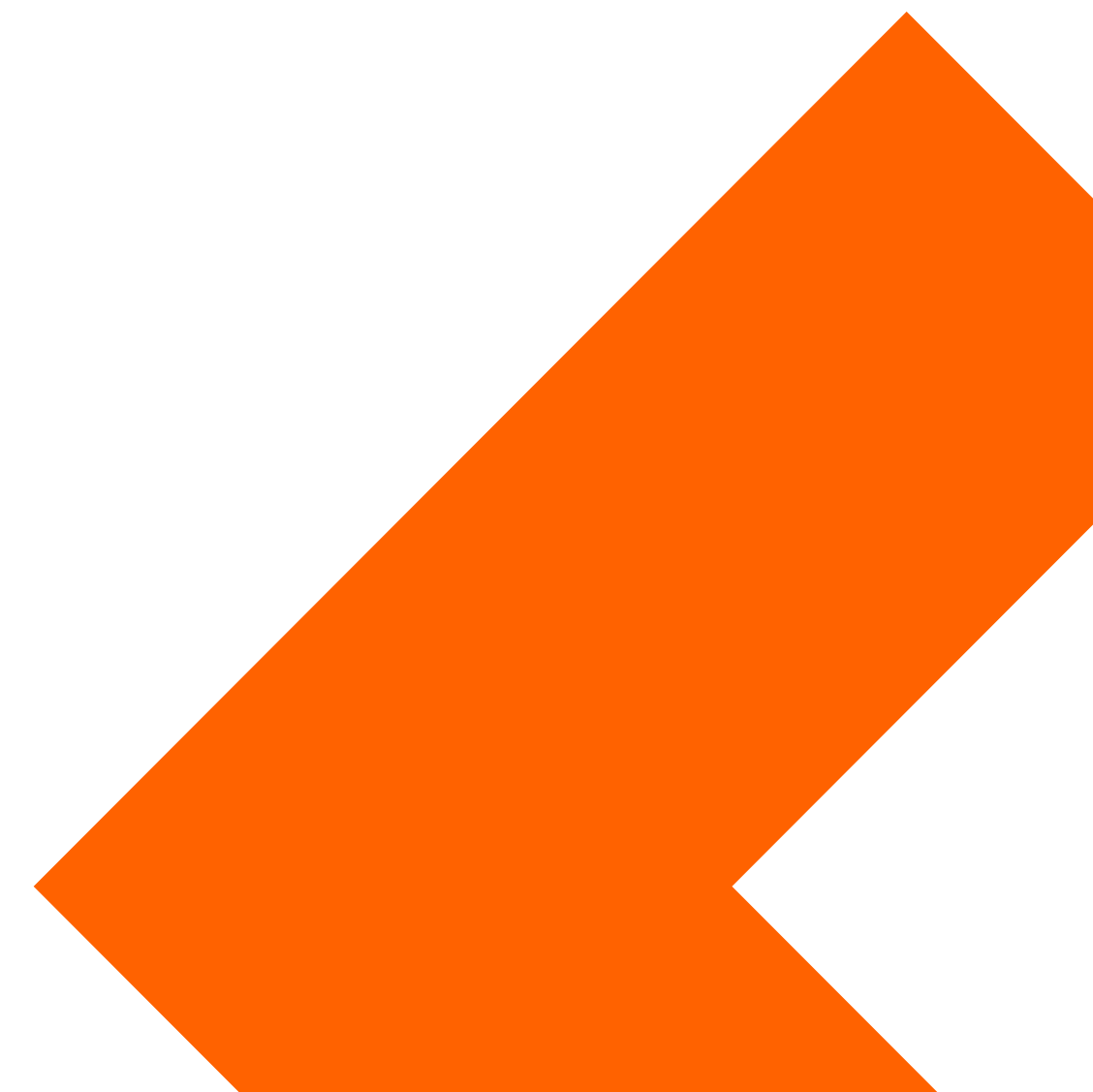
Personal data

'personal data' means **any information** relating to an identified or **identifiable natural person** ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;



Processing

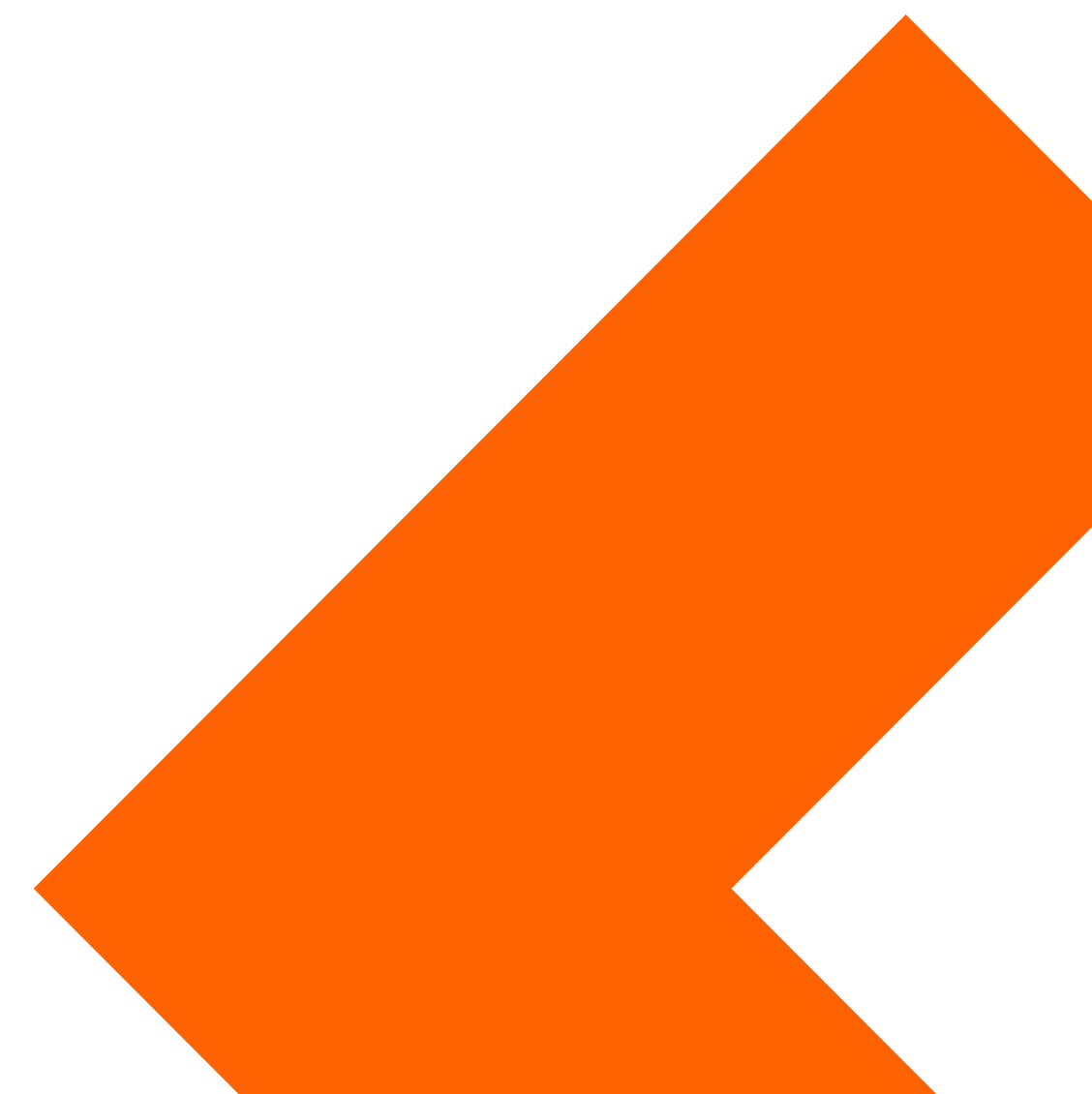
All processing **such as** collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;



Lawfulness of processing

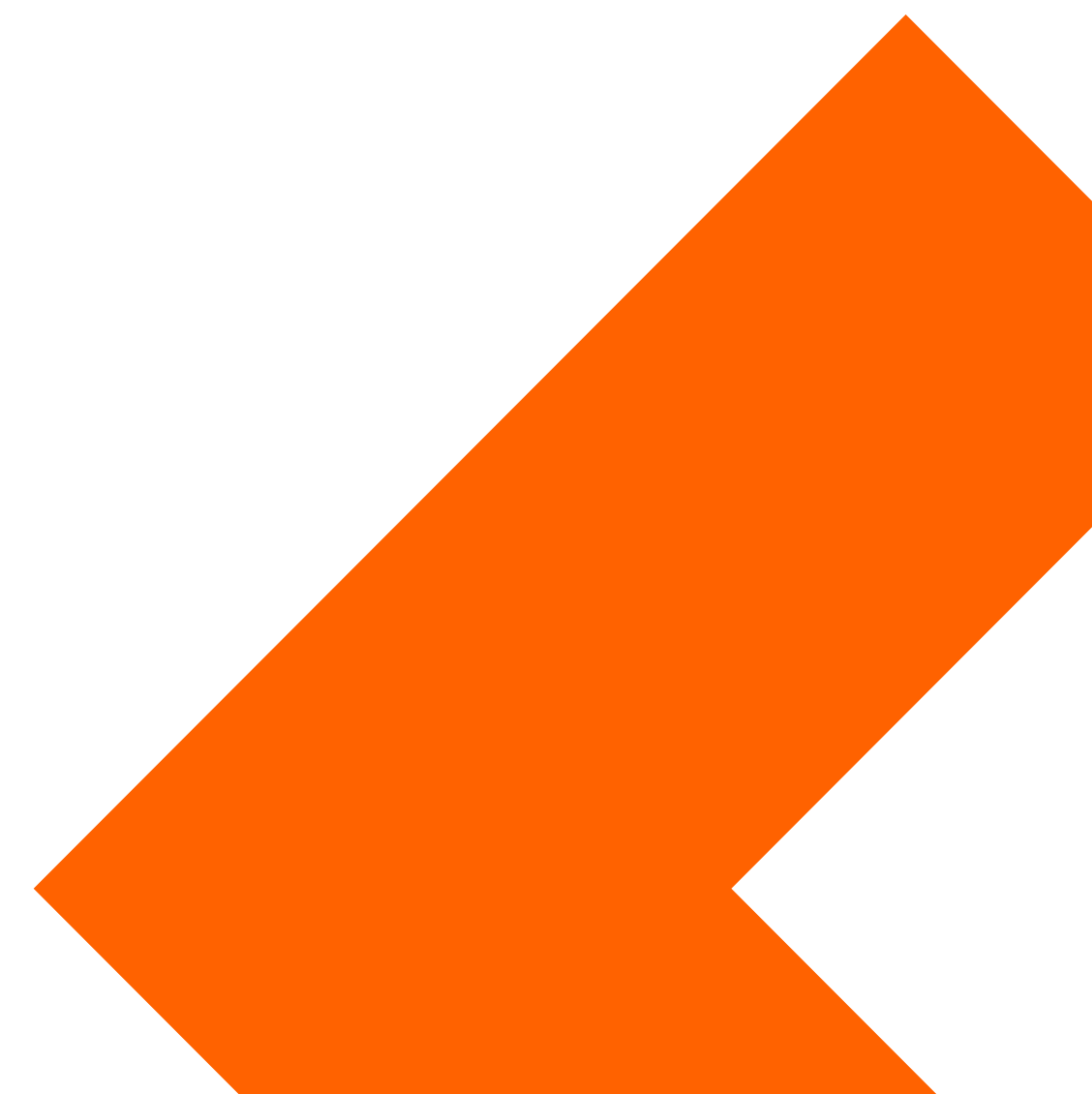
Only if and to the extent that at least one of the following applies:

- A. the data subject has **given consent** to the processing of his or her personal data for one or more specific purposes;
- B. processing is necessary for the **performance of a contract** to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract;
- C. processing is necessary for compliance with a **legal obligation** to which the controller is subject;
- D. processing is necessary in order to protect the **vital interests** of the data subject or of another natural person;



Lawfulness of processing

- E. processing is necessary for the performance of a task carried out in the public interest or in the exercise of **official authority** vested in the controller;
- F. processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child.



Conditions for consent

- Freely given;
 - Explicit;
 - Clear language;
 - Clear description of the goal.
-
- **Note:** Can be withdrawn at any time.





Intermediary Liability



Principles

Directive on electronic commerce (art. 14)

- service provider is **not liable** for the information stored at the request of a recipient of the service
- **No actual knowledge** of illegal activity or information and not aware of facts or circumstances from which the illegal activity or information is apparent;
- upon obtaining such knowledge or awareness, **acts expeditiously** to remove or disable the information.



Linking to materials

How is the content accessible?	Is the content published with rightsholder's consent?	Is there a profit making intention?	Does the linker has knowledge that the content linked to is unlawful?	Act of communcation to the public?	Potention Infringement
Freely	No	No	No	No	No
Freely	No	No	Yes (linker is notified)	Yes	Yes
Freely	No	Yes	Presumed	Yes	Yes
Freely	Yes	N/A	N/A	No	No
Not freely	No	N/A	N/A	Yes	Yes
Not freely	Yes	N/A	N/A	Yes	Yes





Break



Overview of rights

	Protected subject matter	General duration of right
Copyright	Literary and artistic works	70 post mortem author
Neighbouring rights	performances, phonogram producers, broadcasters, film producers	50-70 year post creation / available to public
Database Rights	Works/data organised in a systematic or methodical way	15 years after every substantial investment
Personal data (not an intellectual property right)	All identifiable information about a natural person	At least as long as the person is alive





Identify the rights holders



'De Eierdans' door Pieter Aertsen.
Publiek Domein, collectie Rijksmuseum

Identify the rights holders?

- Of this music video
- On the next image?





Mark Gunn / 'A visit to the museum' CC BY 2.0 depicting Rainy Season
in the Tropics, 1866, Frederic Edwin Church

Creative Commons

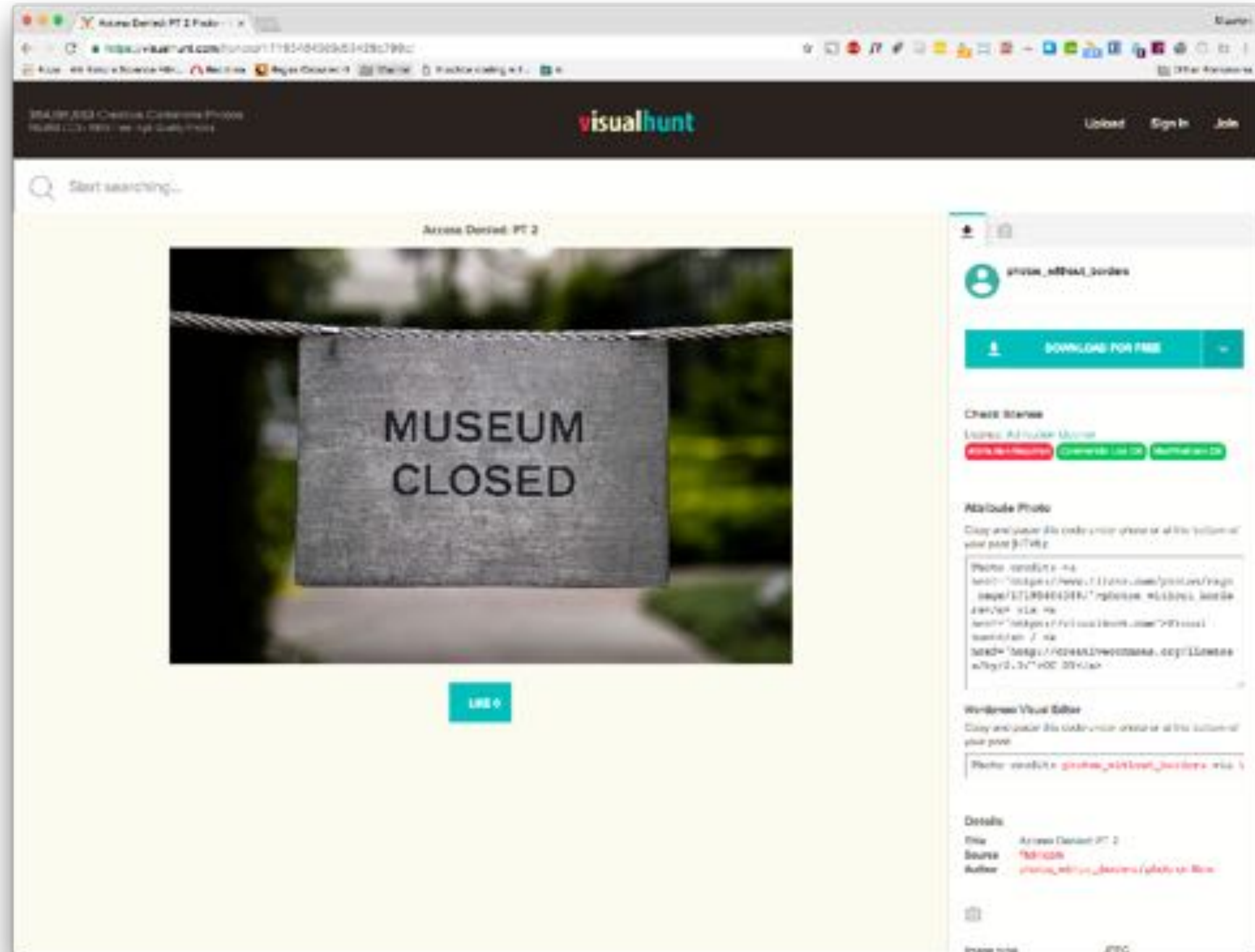


Staten Museum for Kunst, Public Domain

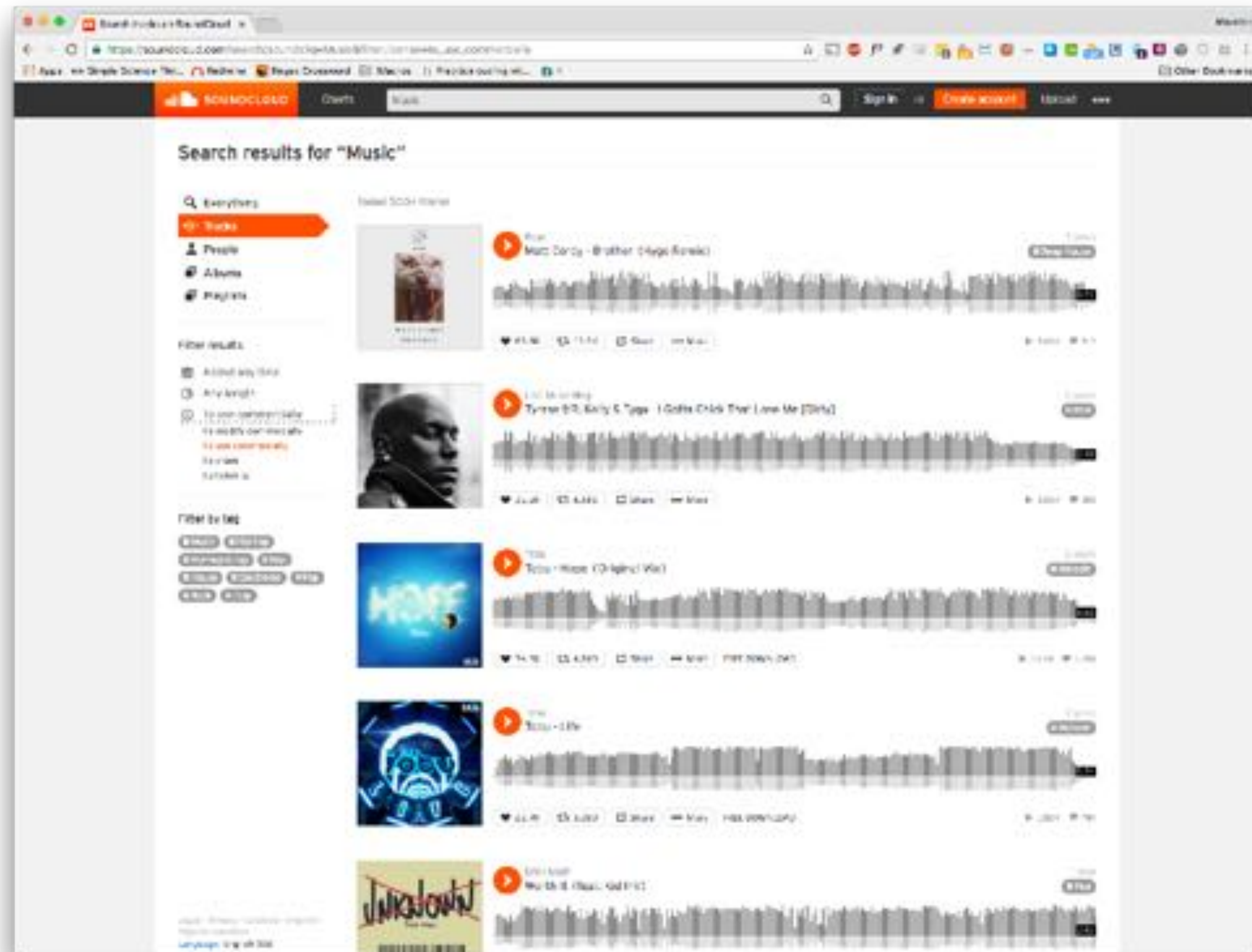
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MUSEUM
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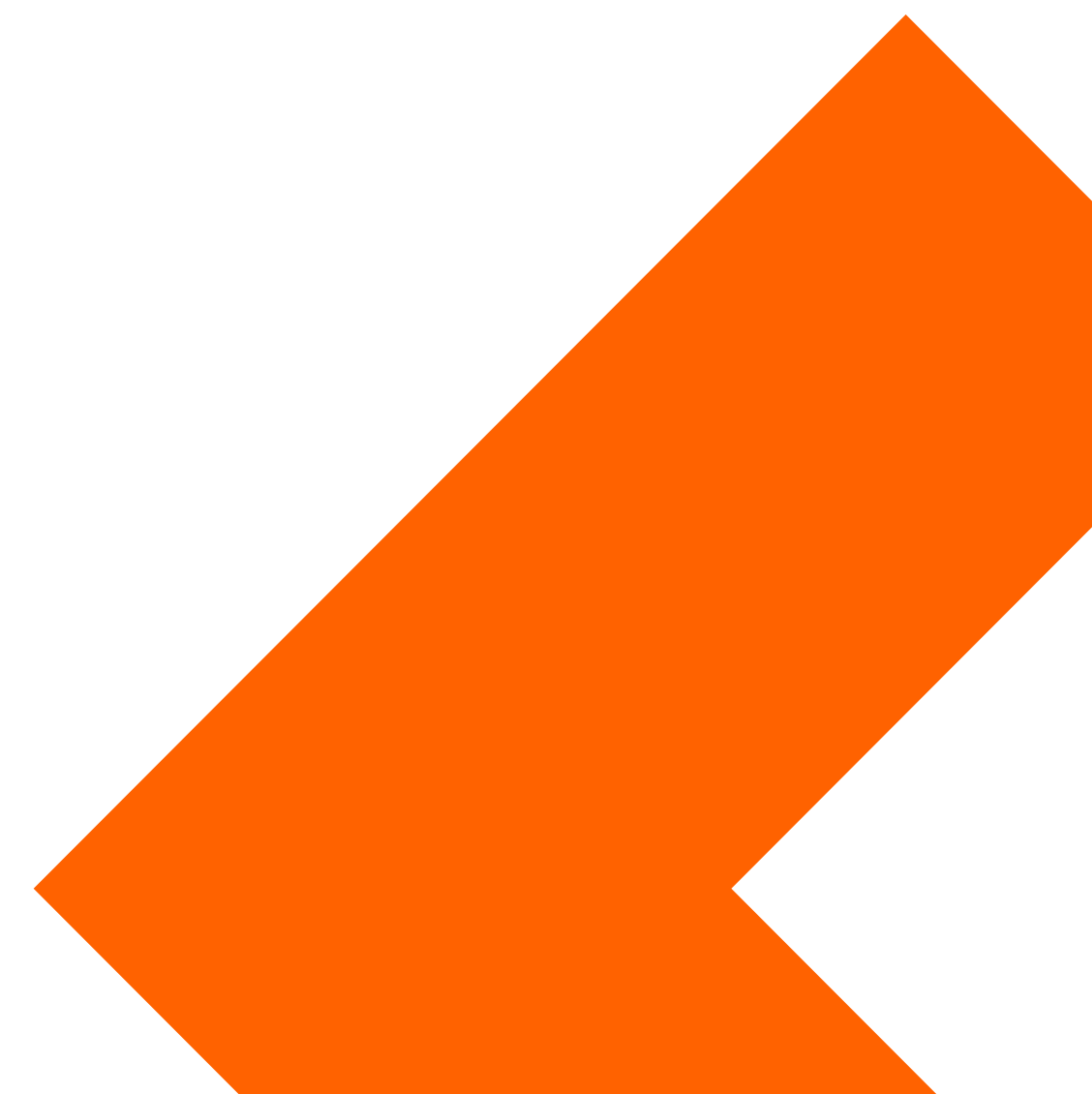
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some rights reserved

Public Domain:
no rights reserved

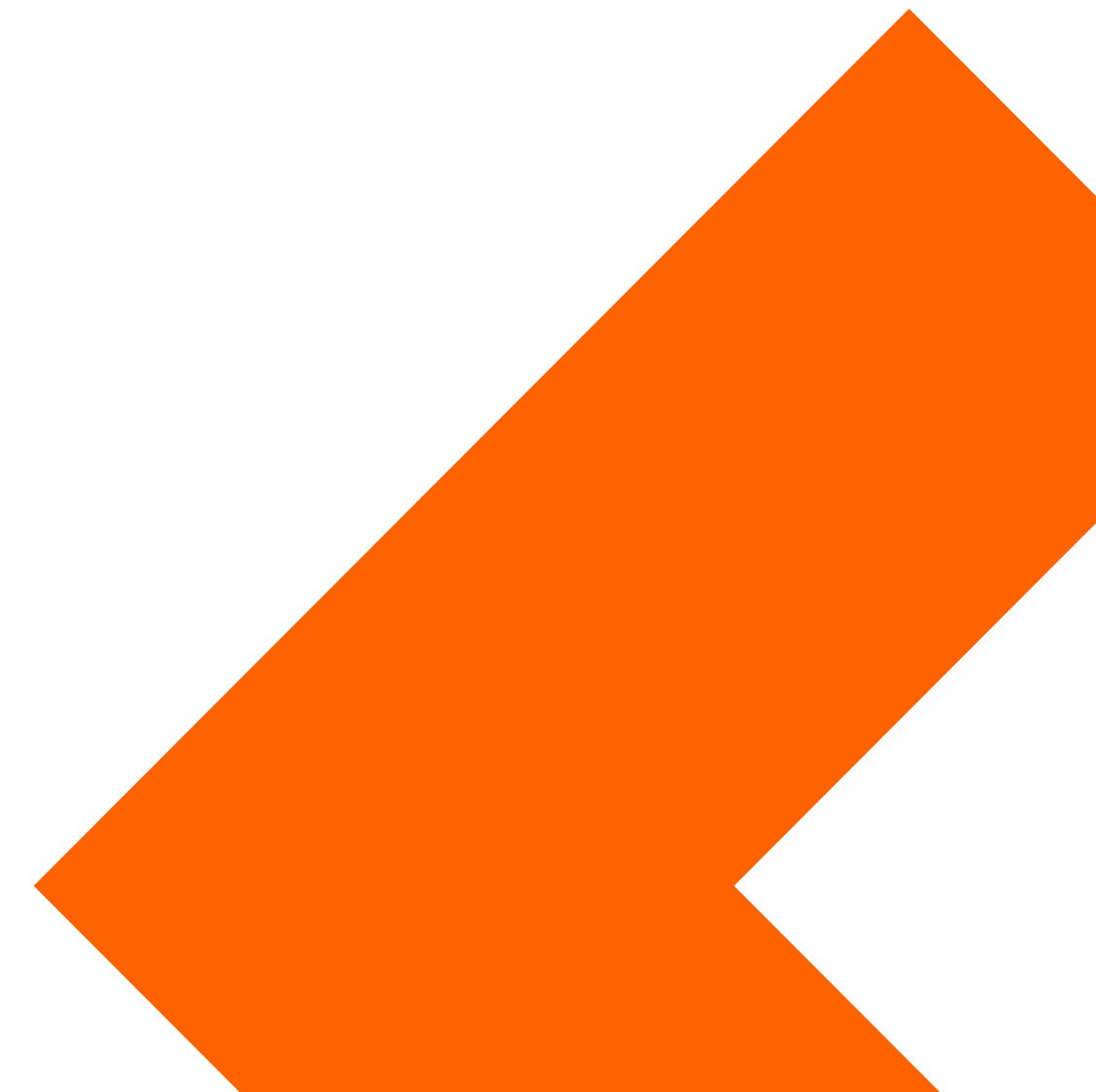


Principles

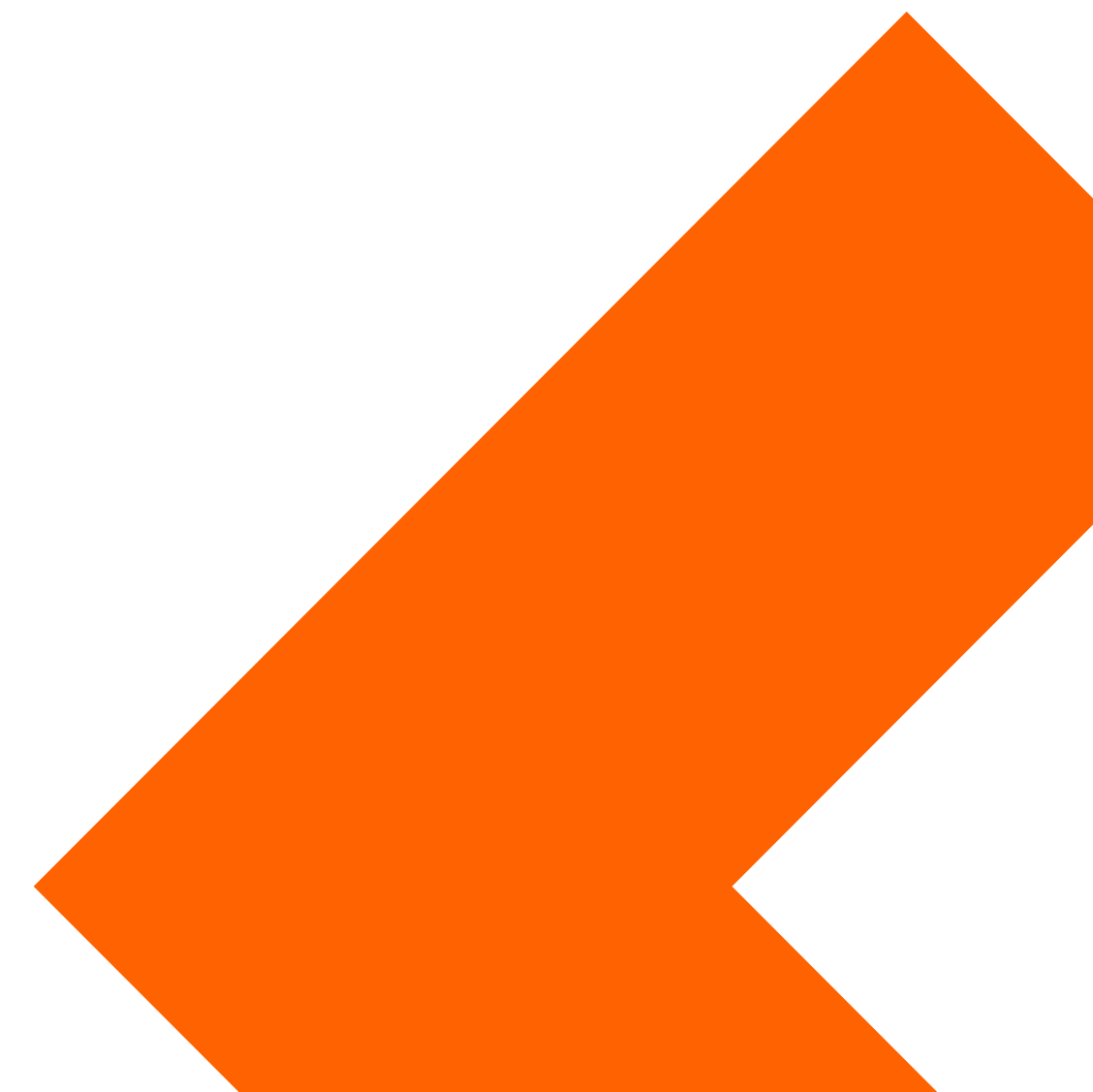
- Creative Commons licenses are 1-to-many licenses
 - the licensor gives permission to the world to use the work under certain condition
- Creative Commons licenses cannot be retracted
- Creative Commons licenses are internationally applicable
- Only rights holder of the economic rights can give permission to license something under a Creative Commons license



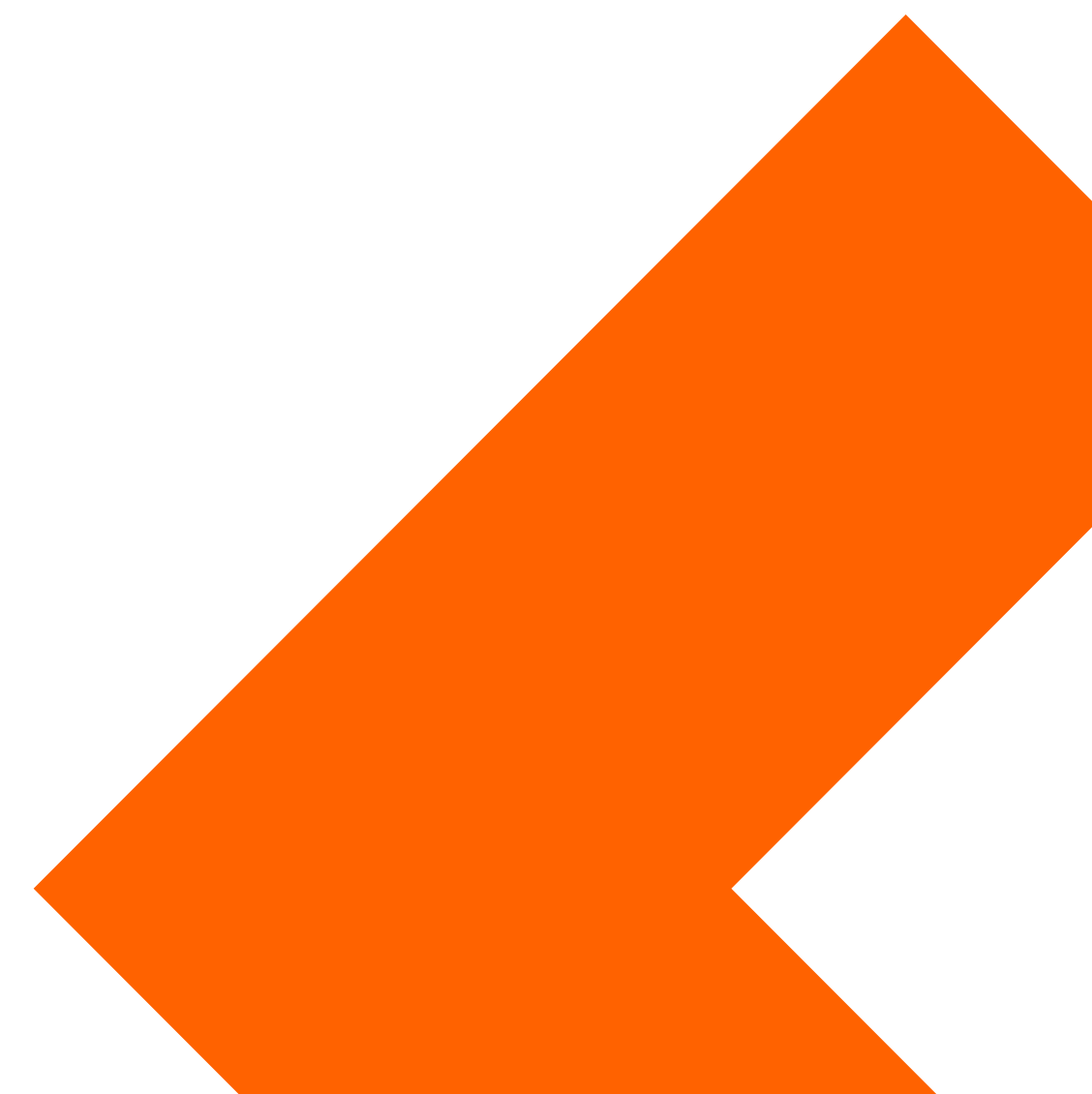
Attribution



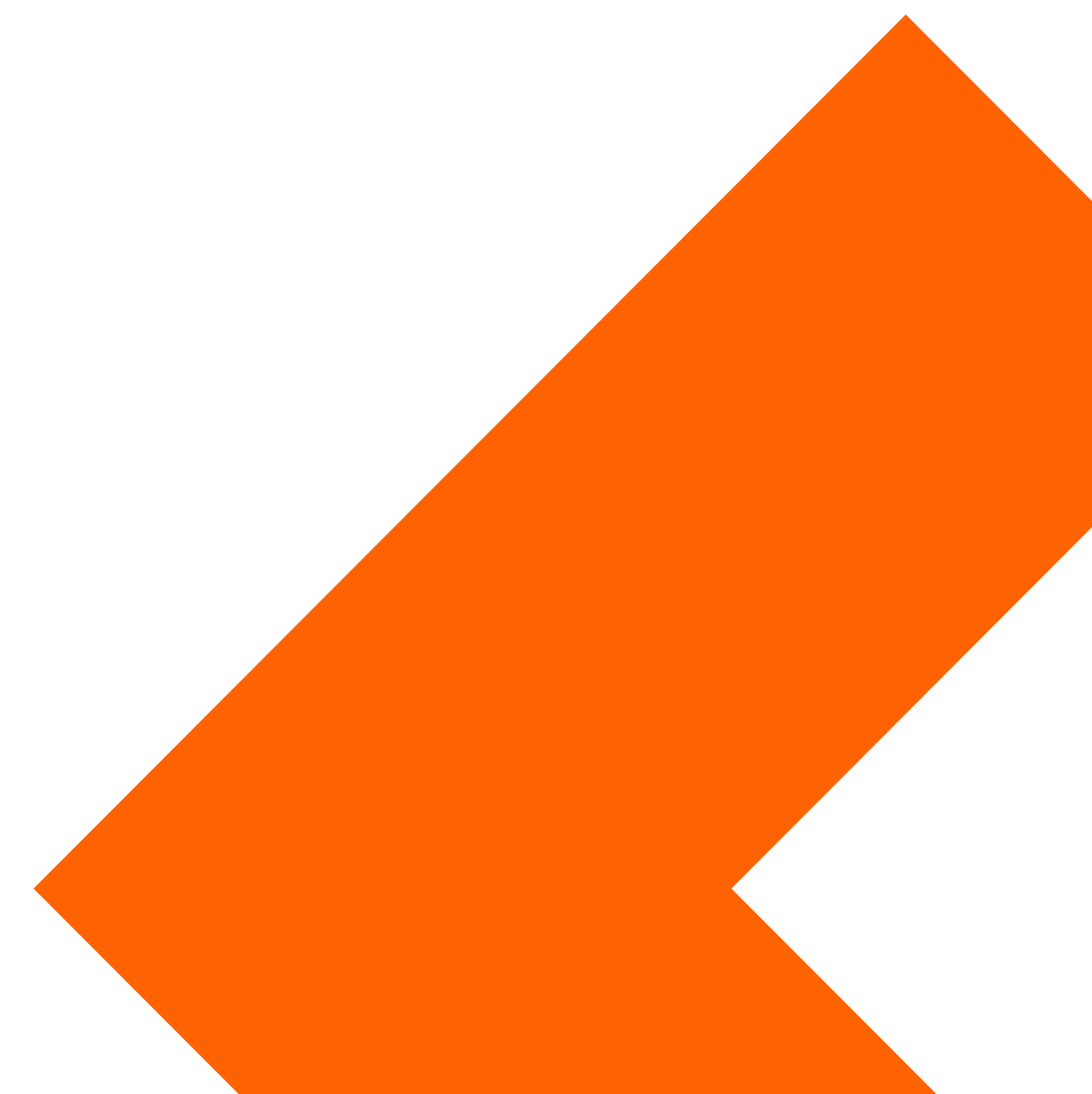
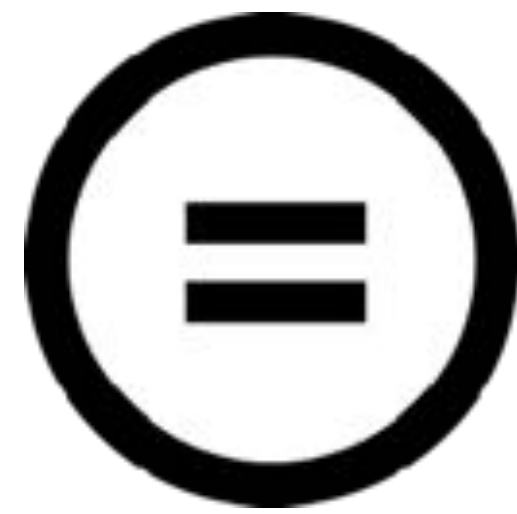
Share Alike







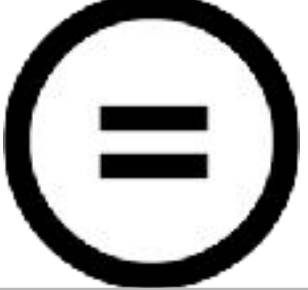







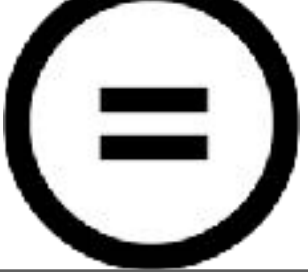
NonCommercial



No Derivatives



Creative Commons licences

	Attribution	NonCommercial	NoDerivatives	ShareAlike
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CC BY-SA				
CC BY-ND				
CC BY-NC				
CC BY-NC-SA				
BY-NC-ND				

Six Creative Commons licenses are build from these four building blocks

- Attribution (BY)
- NonCommercial (NC)
- NoDerivatives (ND)
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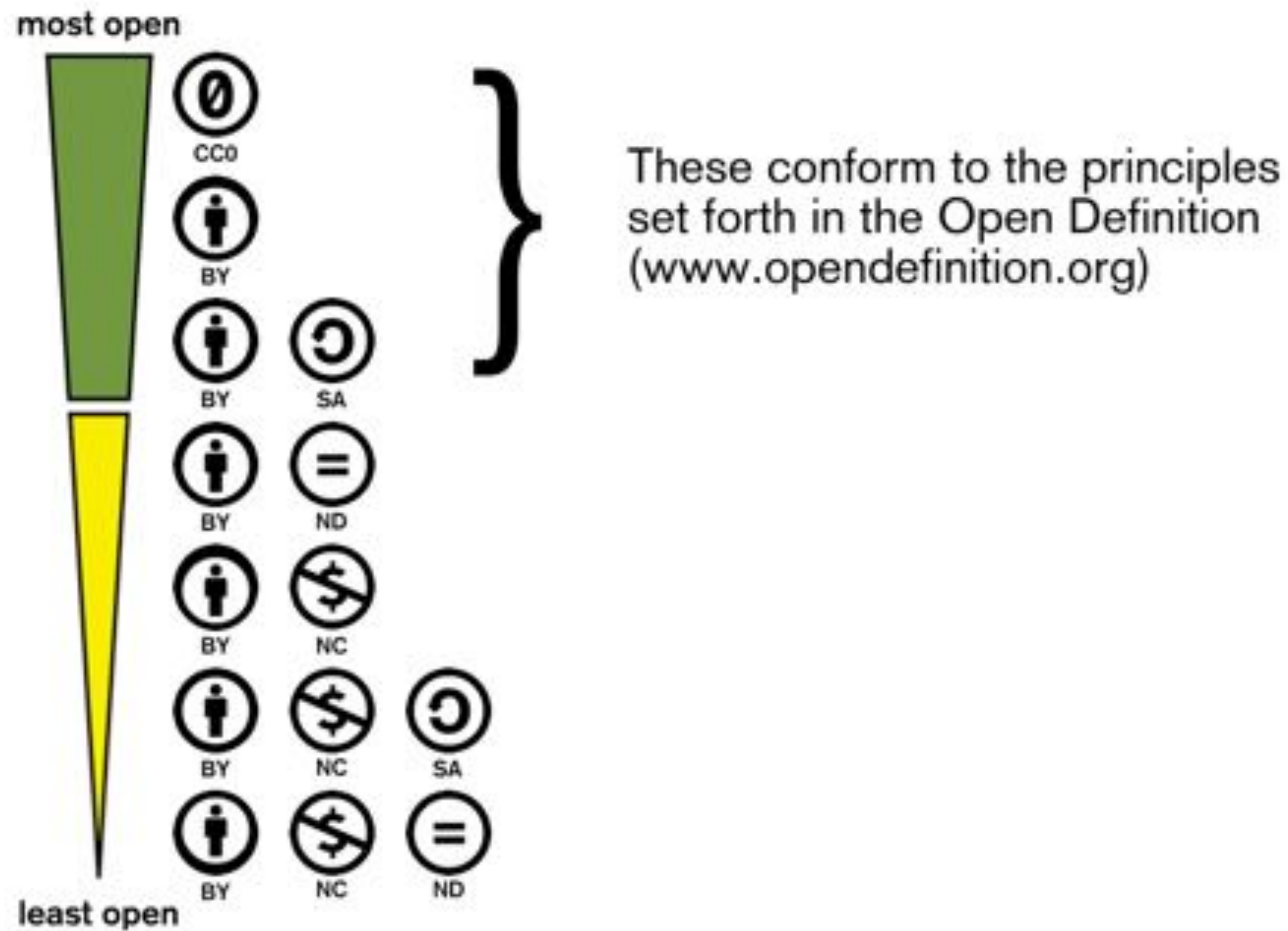


Creative Commons legal tools

- Public Domain Mark (PDM)
 - Only used to mark the public domain
- Creative Commons Zero (CC0)
 - Used to dedicate a work to the public domain



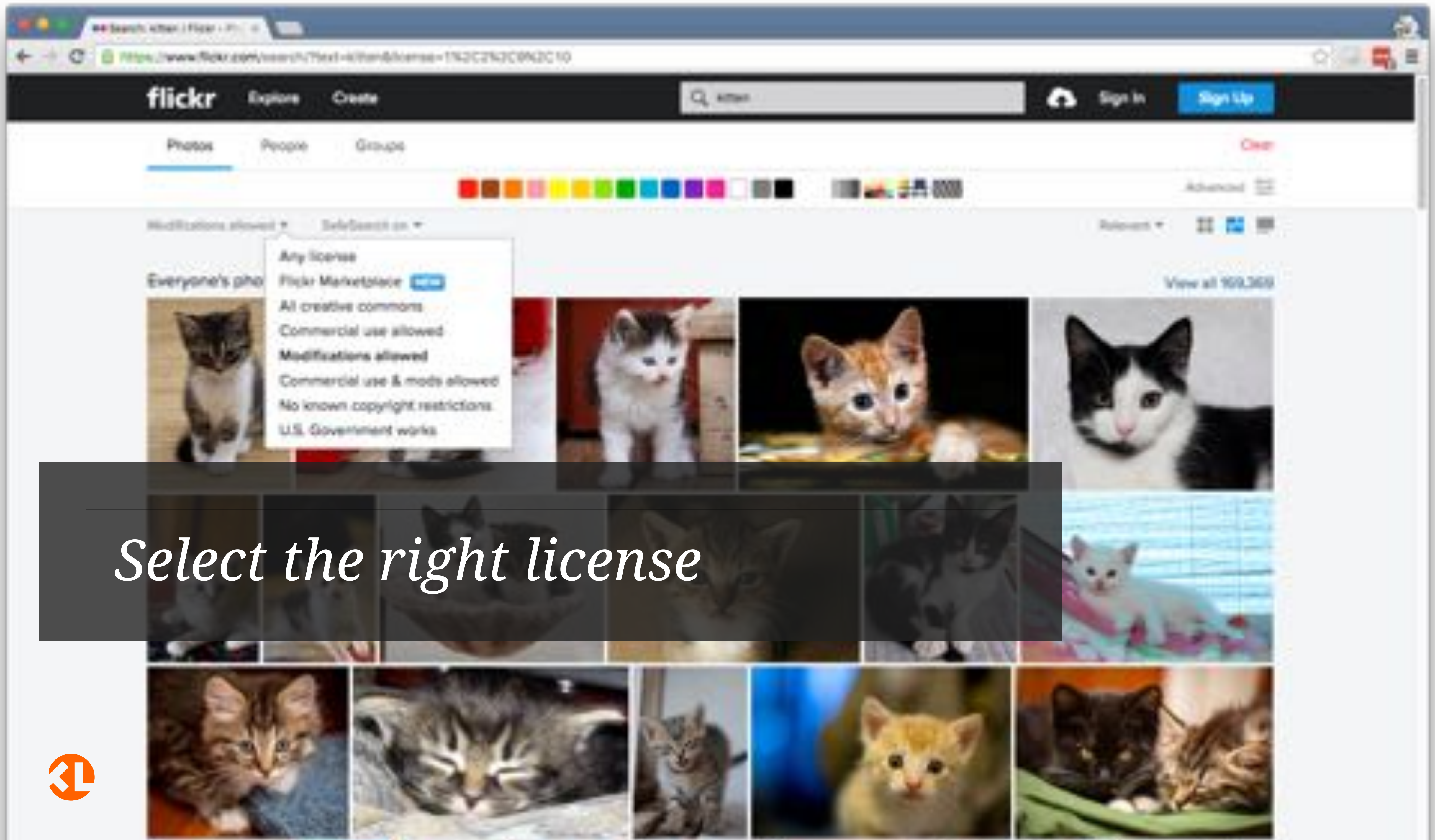
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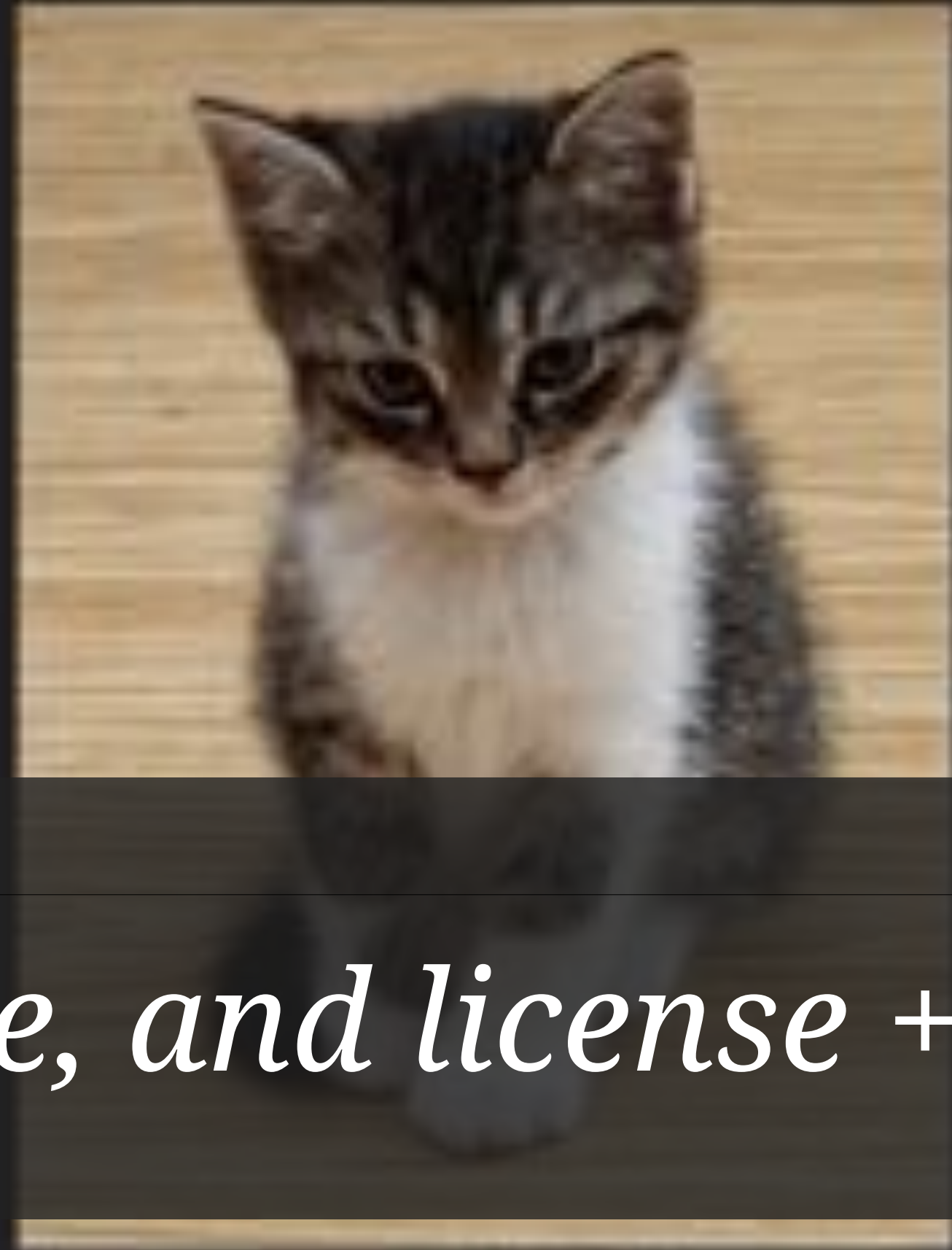
Attribution

- Display the name of the work
- Display the name/pseudonym of the author (incl. link)
- Indicate if you made changes
- Display which license is applicable
- Provide a link to the full license text
- Display the source of the work (optional)
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- Remove any mention to the author upon his request.





Select the right license



Copy title, name, and license + link



Zruda

+ Follow

Kitten

6,083 views

15 likes

3 comments

Taken on June 28, 2012

Some rights reserved





Example



Uitsnede van 'Kitten' by [Zruda](#) / [CC BY-NC-SA](#)

No license settings required for Wikimedia Commons



2 kittens taking a nap



Stephen Brunet [Macphreak](http://macphreak.com) - <http://macphreak.com>

[More details](#)

CC BY-SA 3.0

Copy title, name, and license + link

Size of this preview: 800 x 600 pixels. Other resolutions: 320 x 240 pixels | 640 x 480 pixels | 1,024 x 768 pixels | 1,280 x 960 pixels | 1,536 x 1,152 pixels | 2,048 x 1,536 pixels

Original file (2,072 x 1,704 pixels, file size: 1.8 MB, MIME type: image/jpeg); ZoomViewer: fastmo fast

 Open in Media Viewer 

Summary (edit)

Description	2 others taking a nap
Date	11/2007
Source	http://www.flickr.com/photos/stephenbrunermacpherson/
Author	Stephen Bruner Macpherson

Licensing (edit)

I, the copyright holder of this work, hereby publish it under the following license:

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You are free:

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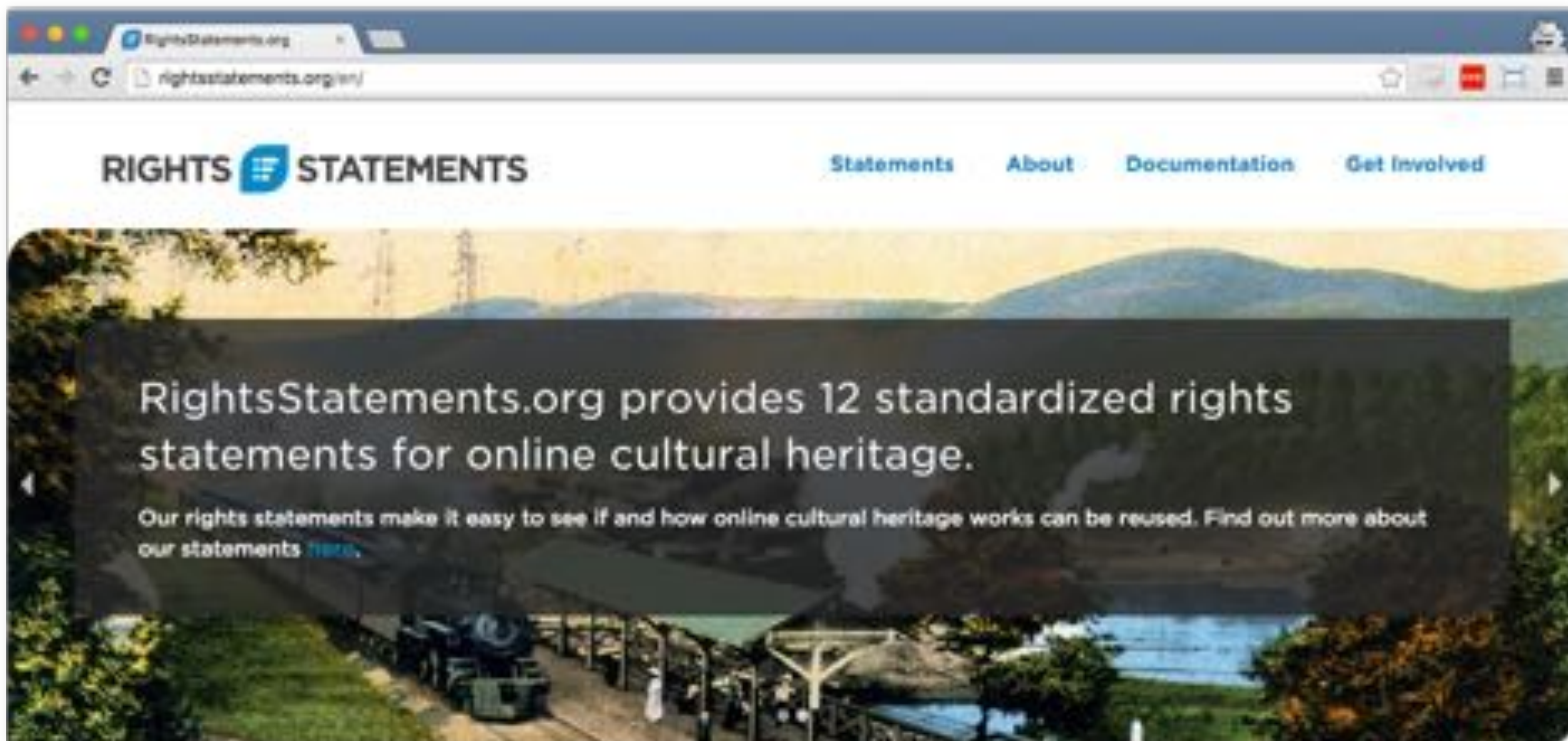
- attribution – You must attribute the work in the manner specified by the author or licensor (but not in any way that suggests that they endorse you or your use of the work)
- share alike – If you alter, transform, or build upon this work, you may distribute the resulting work only under the same or similar license to this one.



Example



Detail of '[2 kittens taking a nap](#)' by Stephan Brunet (Macphreak) / [CC BY-SA](#)



Cases



Johannes Vermeer, Public Domaine, Rijksmuseum

Photographing children at public events

What are the rules regarding photographing underage people at public events?

– Petre Rusescu



Materials from partners

Can I republish material provided to me by partner organisations?

- Wannes Haemers, Sara Peeters

How about material I already received?

- Ari Brozinski

Projects have to send us a copyright free image to use, our designer prepares a poster for each of the projects and we send it to them to use. Can we print and use those posters too?

- Irma Astrauskaite

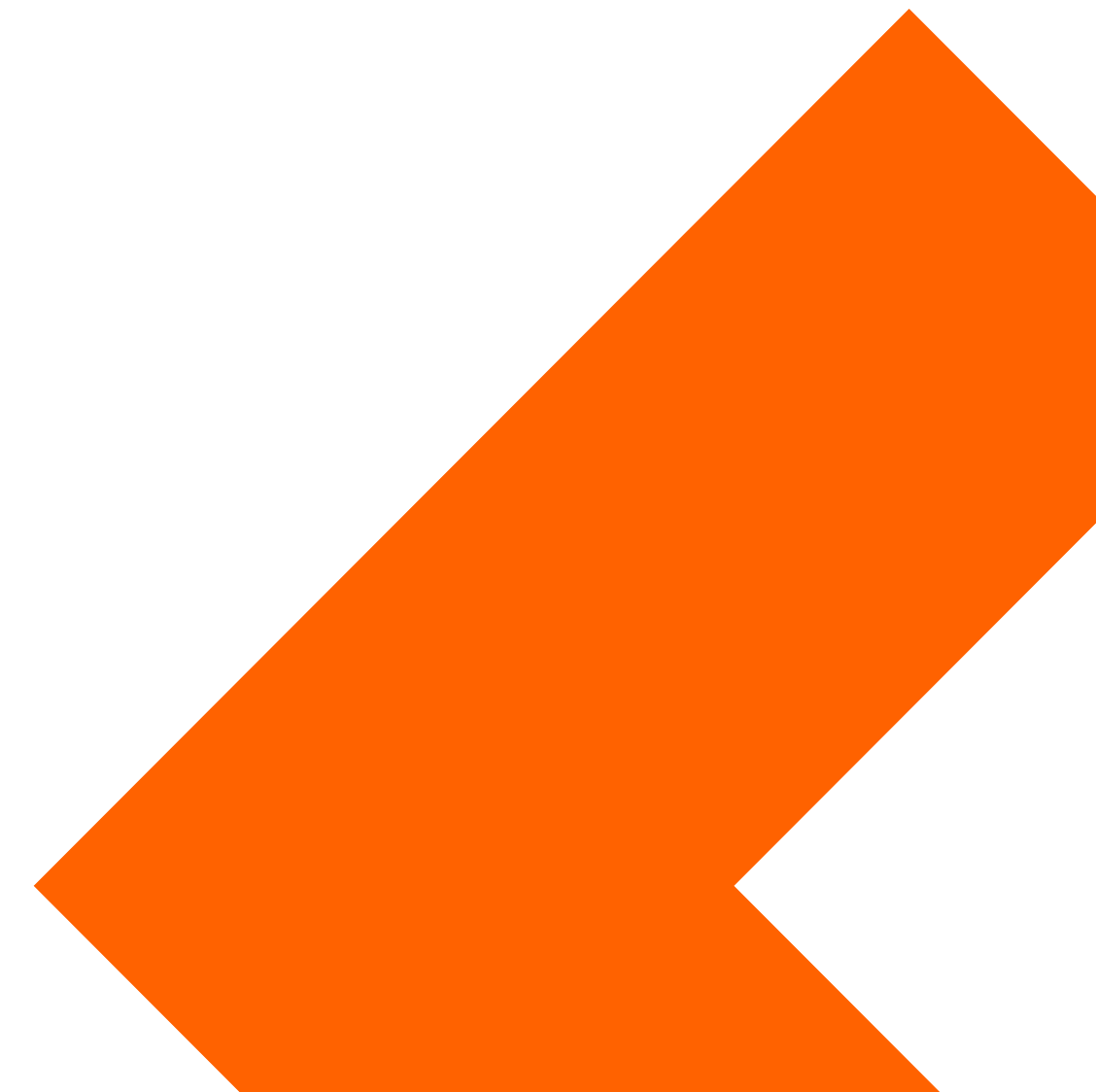


Materials from partners

Can I republish material that I have to other platforms like Facebook or YouTube? (downstream permission)

Can you waive liability? (No)

“the Interreg Europe programme authorities are not liable for any use that may be made of the information contained therein.”



Music

Where can I get music from for my audiovisual productions?

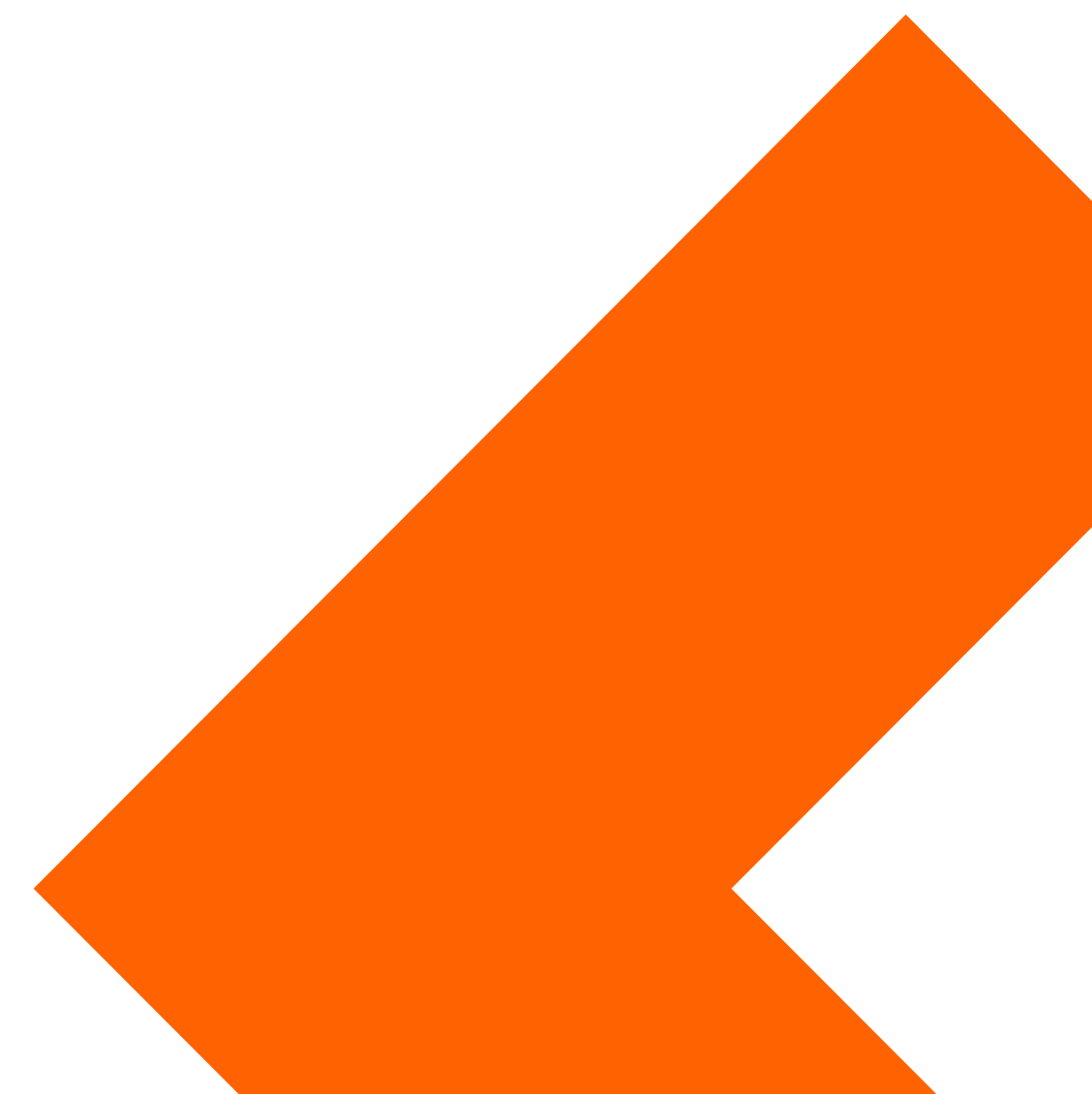
– Anna Koktsidou

Under what circumstances is it OK for me to use a famous (copyrighted) music piece in a YouTube video?

– Nebojsa Nikolic

How do we find out who owns property rights to a song?

– Nebojsa Nikolic



Use of EU flag

- What are the rules for using the EU flag on promotional material
 - Agnieszka Ćwikła






Platforms



'De Eierdans' door Pieter Aertsen.
Public Domain, collectie Rijksmuseum



HomeCollectioncats

Try ProUploadmzeinstran

Search results for "cats"

Everything

SoundCloud Go+ tracks

Tracks

People

Albums

Playlists

Filter results

Added any time

Any length

To modify commercially

To use commercially

To share

To listen to

Filter by tag

Hip-hop & Rap

Electronic

Rock

House

Drum & Bass


Comedy

Sports

Hip-hop

Entertainment

Found 500+ tracks



Shmee Jay

Jerry Garcia Band - Cats Under The Stars (Hermano Dynamicron Quick Edit)

The Dead

568


68

Share

More

Dynamicron

23:4828



eric tang

killa cats backstreet

92


828

150

Share

More

31:4017



KevinMacLeod

Hep Cats - Full Mix

Organ

222

14

Share

More

Buy

1:290

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Language: English (US)

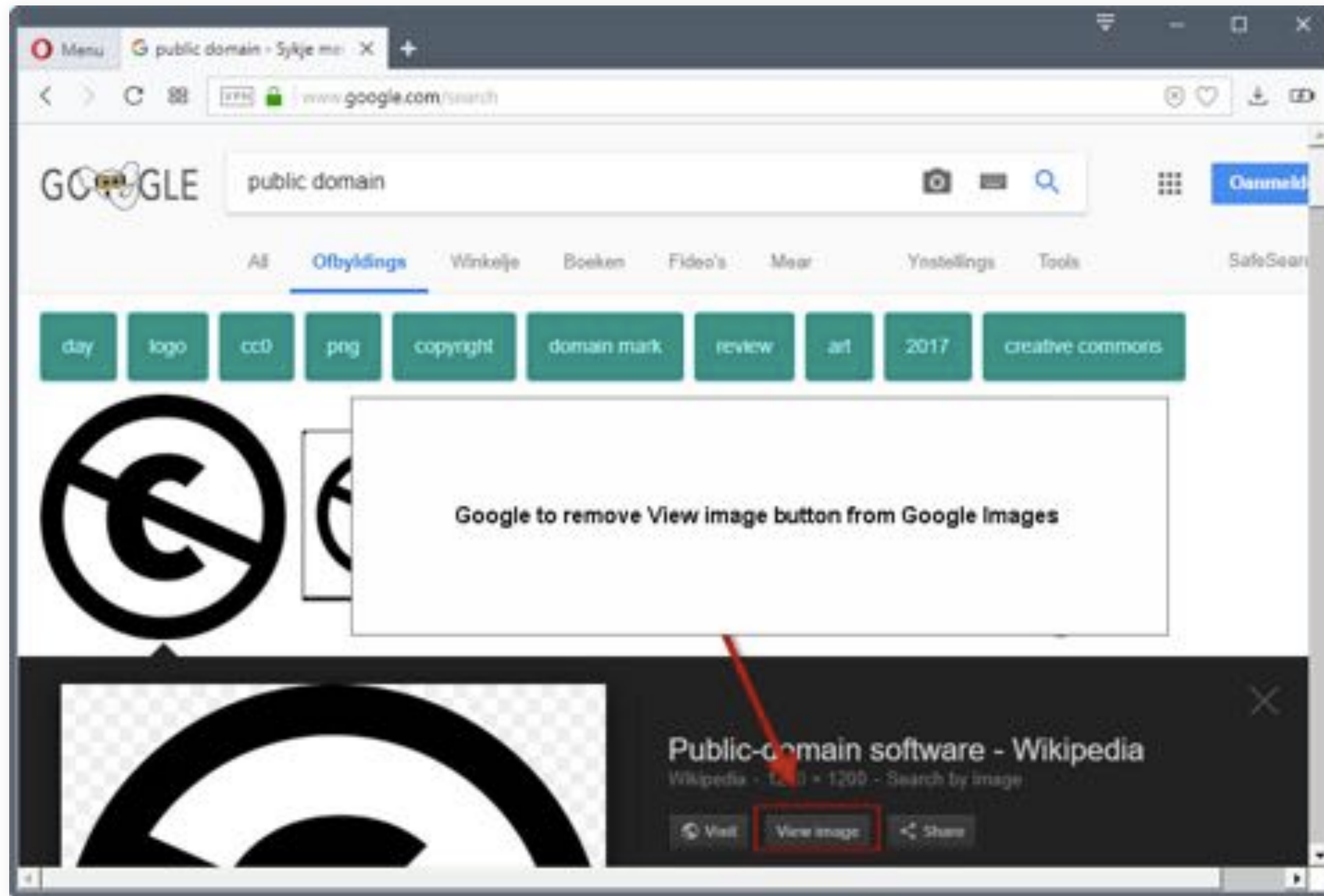



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YouTube

Search



The Blues Brothers - Everybody needs somebody - 1080p Full HD


8,307,297 views

264

1K

SHARE

17

 **Juanjo de Goya**
Published on 7 May 2013

SUBSCRIBE 1.2K


The Blues Brothers performing 'Everybody needs somebody (to love)' in the 1980 film The Blues brothers.

Category: Entertainment

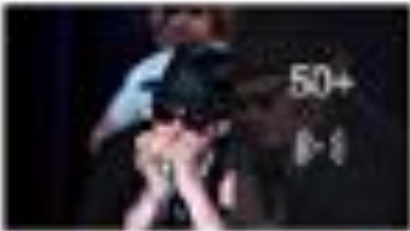
Licence: Standard YouTube Licence

Up next


AUTOPLAY ☒



Judges are Skeptical of Film But Then THIS Happens | Auditions
Talent Recap · 18M views



Mix - The Blues Brothers - Everybody needs somebody - YouTube




'Whiplash' Ending - Andrew




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Noi suntem muncitori,
academicieni, artisti,
oameni de stiinta,
avocati etc.



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Instagram



Happy cat wearing huge eyeglasses



1,903 +30



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Attribute Photo

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Photo on [Visualhunt](#)
src="https://visualhunt.com/re/a/1612f7471a0a18a007a0"

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Commercial Use OK

Modification OK



flickr

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



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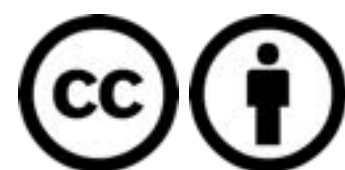
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Thank you!

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